

STATE BOARD TO REVIEW CLAIMS

MEETING OF SEPTEMBER 9, 2004
Videoconference - Carson City & Las Vegas, Nevada

ITEM IV.E.

SUBJECT: Resolution to Deny Additional Petroleum Fund Coverage for 7-Eleven #27361, 2910 S. Maryland Parkway, Las Vegas, State Facility #8-000623, Petroleum Fund Case ID #1998000053.

DISCUSSION: On October 21, 1998 the Nevada Division of Environmental Protection (NDEP) granted 7-Eleven #27361 full Petroleum Fund (Fund) coverage for a gasoline release that occurred from product piping associated with one of the three underground storage tank (UST) systems at the site. Remediation and monitoring of that release is ongoing (Petroleum Fund case #1998000053 which has been reimbursed over \$86,000 by the Fund to-date).

As a consequence of monitoring activities associated with the ongoing remediation and monitoring activities, 7-Eleven became aware that the concentration of MTBE in the site's groundwater was steadily increasing.

7-Eleven #27361 has applied for additional Fund coverage for the three leaking USTs that were operated as described below.

Between August 1 and August 12, 2002, 7-Eleven had a tracer test performed on the site's three 10,000 gallon USTs. 7-Eleven received the results of the tracer test, dated August 22, 2002, on August 30, 2002 (Attachment "A"). All 3 UST systems failed the tracer test.

On September 13, 2002 7-Eleven notified NDEP that all three tanks had failed the tracer test. 7-Eleven continued to operate the tank systems and, in December 2002, had the UST systems tested using a Stage II Vapor Recovery System Integrity test. This test is normally performed to satisfy air pollution control requirements. It tested the vapor recovery return pipe only. The system passed the test.

On February 14, 2003 the UST systems were inspected using petroscope technology. This technology examines the inside of USTs by using a remotely operated camera. The examination revealed pinholes and cracks in 2 of the USTs and internal structural problems with all 3 USTs (Attachment "B").

Between June 2002 and May 2003 the Automatic Tank Gauge Leak Result system at the site, which records leaks greater than 0.2 gallons per hour, detected a leak only on each of the nine days between November 9th and November 17th, 2002 (Attachment "C").

On May 22, 2003 NDEP notified 7-Eleven that, based on the failed tracer tests and continuing elevated MTBE concentrations, it was apparent that there was an ongoing release at the site. 7-Eleven was advised by NDEP that the processing of Fund claim submittals for this site was suspended pending identification and repair of leak source(s).

On July 17, 2003 the subject UST system were emptied and taken out of service, 11 months following the failed tracer test.

On September 4, 2003 NDEP received an Application for **Additional** Fund Coverage for three leaking tank systems. In that application, the “date discharge was discovered” is listed as “unknown”.

On December 10, 2003 the 3 USTs were removed from the ground. Pictures were taken of the removed tanks (Attachment “D”). The pictures depict various conditions of tank failures and indicate that the three USTs removed were a source of the increasing MTBE concentrations first evidenced in June 2002 and continuing through July 2003.

The last Fund claim received by NDEP for this site was dated September 6, 2002, was for the **1997** release, and was for “activities conducted under the 1997 budget”.

No claims for case #1998000053 have been submitted to the Fund for activities occurring in the years 1999 through 2004. It is most likely however, that remediation costs during this time period would include costs associated not only with the 1997 release but also with the ongoing releases from the three removed USTs which have not been granted coverage by the Fund.

NAC 590.780 (1) states

“An operator, vendor or contractor who seeks to be reimbursed by the fund for costs or liability for damages resulting from a discharge must submit to the division a verified claim for reimbursement in the form prescribed by the board along with any supporting documents required to substantiate his eligibility for reimbursement. An initial claim must be submitted within twelve months after the date on which the operator, vendor or contractor knew or should have known of the discharge and the final claim must be submitted within twelve months after the completion of the corrective action necessitated by the discharge. The board will not accept a claim after either deadline unless the operator vendor or contractor demonstrates good cause for the failure to comply with the deadline.”

NAC 590.780 (7) further states

“As used in this section, “claim” or “claim for reimbursement” means a request for reimbursement by the fund of a sum of money, accompanied by the required supporting documents. The term does not include an application for coverage under the fund.”

RECOMMENDATION: **Adoption** of Resolution 2004-11 as Proposed, Denying Additional Fund Coverage to the Subject Facility, Pursuant to NAC 590.780.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2004-11

Resolution to Deny Additional Petroleum Fund Coverage for 7-Eleven #27361
2910 S. Maryland Parkway, Las Vegas
Petroleum Fund Case ID #1998000053
Facility ID #8-000623

Whereas, the State Board to Review Claims (hereinafter referred to as the Board) Finds:

1. 7-Eleven #27361 is Petroleum Fund site #1998000053 presently undergoing remediation with full Petroleum Fund (Fund) coverage for a gasoline release that occurred in 1997.
2. 7-Eleven #27361 has applied for additional Fund coverage for the three USTs described below.
3. On August 30, 2002, 7-Eleven received the results of a tracer test performed on the 3 operating USTs at the site. All 3 UST systems failed the tracer test. The date of discovery of a first leak source is August 30, 2002. On September 13, 2002, 13 days after leak discovery, 7-Eleven notified NDEP that all three tanks had failed the tracer test (Attachment "A"). 40 CFR 280.61 requires the reporting of a release within 24 hours of discovery.
4. On February 14, 2003 the UST systems were inspected using petroscope technology. The examination revealed pinholes and cracks in 2 of the USTs and structural defects in all 3 USTs. The date of discovery of a second leak source is February 14, 2003. (Attachment "B")
5. 7-Eleven has submitted leak detection records for each of the three tank systems evidencing that they were in substantially continuous operation from June 2002 thru May 2003 (Attachment "C"). On July 17, 2003 the subject UST systems were emptied and taken out of service. The leaking UST systems remained in operation from August 30, 2002 thru July 17, 2003, a period of 11.5 months. 40 CFR 280.61 requires "Upon confirmation of a release in accordance with 280.52 or after a release from the UST system is identified in any other manner, owners and operators must ... (b) Take immediate action to prevent any further release of the regulated substance into the environment;..."
6. On September 4, 2003 NDEP received an Application for Additional Fund Coverage for the three leaking tank systems. The last Fund claim received by NDEP for this site was dated September 6, 2002 for the 1997 release for "activities conducted under the 1997 budget". To date, NDEP has not received a claim from 7-Eleven for reimbursement for costs associated with the three USTs discovered to be leaking in 2002.

7. NAC 590.780 (1) states "An operator, vendor or contractor who seeks to be reimbursed by the fund for costs or liability for damages resulting from a discharge must submit to the division a verified claim for reimbursement in the form prescribed by the board along with any supporting documents required to substantiate his eligibility for reimbursement. An initial claim must be submitted within twelve months after the date on which the operator, vendor or contractor knew or should have known of the discharge and the final claim must be submitted within twelve months after the completion of the corrective action necessitated by the discharge. The board will not accept a claim after either deadline unless the operator vendor or contractor demonstrates good cause for the failure to comply with the deadline."

NAC 590.780 (7) further states:

"As used in this section, "claim" or "claim for reimbursement" means a request for reimbursement by the fund of a sum of money, accompanied by the required supporting documents. The term does not include an application for coverage under the fund."

8. 7-Eleven failed to submit a claim within the 12-month timeframe pursuant to NAC 590.780.

THEREFORE BE IT RESOLVED:

1. The Board finds that 7-Eleven #27361 failed to submit a claim for reimbursement for the three leaking UST systems that operated through July 2003 to NDEP within twelve months of leak discovery pursuant to NAC 590.780.
2. The Board finds that 7-Eleven has not shown good cause for the failure to submit a claim within the required 12-month time period.
3. The Board denies Additional Petroleum Fund coverage for 7-Eleven site #27361 for the three leaking UST systems.
4. The Board finds that by continuing to operate the UST systems that have been identified as leaking, 7-Eleven may have contributed to the cleanup costs of the ongoing Petroleum Fund covered release.
5. The Board directs staff to assess and identify the extent to which cleanup costs may have been increased and, if warranted, prepare a resolution for presentation to the Board to modify the existing level of coverage for 7-Eleven site #27361, Petroleum Fund case #1998000053.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on September 9, 2004.

John Haycock, Chairman
State Board to Review Claims